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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 JONATHAN W. MCKINNEY,

11 Plaintiff,

12 v.

13 JOHN MILLS,

14 Defendant.

NO. C08-5720 BHS/KLS

ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTINUANCE TO
FILE RESPONSE TO DEFENDANT'S
MOTION TO DISMISS

15 Before the Court is Plaintiff's Motion for Extension of Time to Respond to
16 Defendant's Rule 12(b) Motion to Dismiss. Dkt. 21. Defendant's motion to dismiss (Dkt. 13)
17 is presently noted for July 31, 2008. Plaintiff requests an extension because of recent medical
18 procedures and transfer to a new facility. Dkt. 21. Defendant has not filed a response in
19 opposition to the request for an extension.

20 The Court finds that Plaintiff should be granted an extension of time to respond to the
21 pending motion to dismiss. Plaintiff states that he will present "evidence and argument that
22 will support a claim of physical injury caused in whole or in part by the assaultive conduct of
23 Officer Mills." Dkt. 4, p. 6. However, he has not filed a motion to amend or provided an
24 amended complaint for the Court's review. His response to the motion to dismiss is limited to
25 those facts originally alleged in his complaint. Based on that response, the Court will
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1 determine whether he shall be given an opportunity to amend his pleading in order to cure any
2 deficiencies.

3 Accordingly, it is **ORDERED**:

4 (1) Plaintiff's motion for an extension of time (Dkt. 21) is **GRANTED**.

5 (2) Plaintiff may file his response to the motion to dismiss (Dkt. 13) on or before
6 **September 11, 2009¹**.

7 (3) Defendants' reply shall be due on or before **September 11, 2009**.

8 (4) The court clerk shall re-note the motion to dismiss (Dkt. 13) for the court's
9 consideration for **September 11, 2009**.

10 (5) The Clerk is directed to send copies of this order to Plaintiff and counsel for
11 Defendants.

12 **DATED** this 21st day of August, 2009.

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16 Karen L. Strombom
17 United States Magistrate Judge
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23 ¹Plaintiff states that he is proceeding under the presumption that the court has
24 rescheduled the hearing of this motion due to Defendant's inability to arrange telephonic
25 participation of the Plaintiff. However, unless otherwise ordered by the court, all motions will
26 be decided by the court without oral argument. Counsel shall not appear on the date the
motion is noted unless directed by the court. If a request for oral argument is granted, the clerk
will notify the parties of the date and time for argument. CR 7.